

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35780

TERRENCE J. MATTHEWS,)	2009 Unpublished Opinion No. 602
)	
Plaintiff-Appellant,)	Filed: September 9, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
CHIP MORGAN, BOISE POLICE)	THIS IS AN UNPUBLISHED
DEPARTMENT, CITY OF BOISE,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Defendants-Respondents,)	
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Kathryn A. Sticklen, District Judge.

Order dismissing action, affirmed.

Terrence J. Matthews, Orofino, pro se appellant.

Cary B. Colaianni, Boise City Attorney; Scott B. Muir, Assistant Boise City Attorney, for respondents Boise Police Department and City of Boise.

Chip Morgan, Boise, respondent, did not participate on appeal.

LANSING, Chief Judge

Terrence J. Matthews appeals from the trial court's dismissal with prejudice of his action against the Boise Police Department, the City of Boise and Chip Morgan. Matthews contends the statute of limitations should not bar his action. We affirm.

I.

BACKGROUND

In July of 2007, Matthews filed a complaint against the Boise Police Department, the City of Boise, and Chip Morgan. In the complaint, Matthews alleged various civil rights and tort injuries arising from a polygraph test, administered by Chip Morgan, which Matthews was required to take in July of 2005 as a condition of his parole. That case was dismissed without prejudice in June of 2008 on the ground that Matthews had not properly served the complaint on the defendants. During the hearing on this motion, Matthews alleges that he asked the judge

whether he would be able to refile his complaint, to which the judge answered that because the dismissal was without prejudice Matthews would be able to refile. Matthews further alleges that he relied on the judge's statement in deciding not to contest the dismissal. The case was dismissed as to the Boise Police Department and the City of Boise for insufficiency of process on the government pursuant to Idaho Rules of Civil Procedure 12(b)(5) and 4(d)(5). The claim against Chip Morgan was dismissed for failure to serve the complaint within six months as required by I.R.C.P. 40(c).

Matthews then filed the present action against the same defendants on July 11, 2008, alleging the same torts and civil rights violations as the first complaint. Upon motions of the defendants, the court dismissed Matthews' action on the ground that it was barred by the statute of limitations, Idaho Code sections 6-911 and 5-219(4). Matthews appeals from this dismissal, asserting that the statute of limitations should not bar his action because his original complaint was timely filed and was dismissed without prejudice.

II. DISCUSSION

We note at the outset that many of Matthews' arguments are misplaced because they refer to the dismissal of his 2007 case. Those arguments will not be addressed here because the dismissal of that case was not appealed. The only order that can be challenged on this appeal is the dismissal of Matthews' 2008 case. After setting aside the arguments that pertain only to the dismissal of Matthews' first case, the sole question remaining is whether the district court erred in determining that Matthews' claims are barred by the statute of limitations. This presents an issue of law over which we exercise free review. *State v. Burchard*, 123 Idaho 382, 384, 848 P.2d 440, 442 (Ct. App. 1993).

Tort claims against a government entity must be brought within two years after the claim arose or after the claim reasonably should have been discovered, whichever is later. Idaho Code § 6-911. For claims brought under 42 U.S.C. § 1983, the forum state's statute of limitations for personal injury actions governs. *Wallace v. Kato*, 549 U.S. 384, 387 (2007); *Owens v. Okure*, 488 U.S. 235, 240-41 (1989); *Osborn v. Salinas*, 131 Idaho 456, 458, 958 P.2d 1142, 1144 (1998). Idaho's limitation period for personal injury actions is two years. I.C. § 5-219(4). Thus, all of Matthews' claims were subject to a two-year statute of limitations.

Matthews' claims all arise from the polygraph test administered to him on July 28, 2005, and his subsequent arrest in the early morning hours of July 29, 2005. Therefore, the limitations period for Matthews' action expired on July 29, 2007. Matthews filed this complaint in July of 2008, almost a year after the statute of limitations had run.

Matthews argues, however, that because his first case was dismissed "without prejudice," he should be able to maintain this new action. This argument is without merit. The term "without prejudice" in the dismissal order has no effect on the operation of the statute of limitations. The terms "with prejudice" or "without prejudice" simply refer to whether a subsequent action will be barred on the basis of the doctrine of res judicata or claim preclusion. *See Scott v. Agric. Prod. Corp., Inc.*, 102 Idaho 147, 151, 627 P.2d 326, 330 (1981). The statute of limitations, by contrast, establishes the time period after a cause of action arose within which a complaint may be filed. *See* I.C. § 5-201. Thus, the two are independent procedural bases to bar an action, and the effect of one does not determine the operation of the other. Also contrary to Matthews' argument, the district court was not obligated to advise him of this distinction. Pro se litigants are not excused from compliance with procedural law even if they are unaware of those requirements. *See Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346-47, 941 P.2d 314, 318-19 (1997).

We next consider Matthews' equitable argument against application of the statute of limitations in his case. Although unclear, it appears Matthews is arguing that his "consent" to the dismissal of his first case was in reliance on a statement made by the district judge that Matthews would be able to refile his action because the dismissal would be without prejudice. Matthews argues this statement was misleading and, therefore, the statute of limitations should not apply in this case because he was induced to consent to the dismissal of the action he originally brought within the limitations period.

In Idaho, the only non-statutory ground for barring a statute of limitations defense is the doctrine of equitable estoppel. *City of McCall v. Buxton*, 146 Idaho 656, 663-64, 201 P.3d 629, 636-37 (2009); *J.R. Simplot Co. v. Chemetics Int'l, Inc.*, 126 Idaho 532, 534, 887 P.2d 1039, 1041 (1994). Equitable estoppel does not toll or extend the statute of limitations; it simply prevents a party from asserting it as a defense for a reasonable time after the party asserting estoppel discovers or reasonably could have discovered the truth. *Buxton*, 146 Idaho at 664, 201 P.3d at 637; *Chemetics*, 126 Idaho at 535, 887 P.2d at 1042. A defendant can be estopped from

asserting a statute of limitations defense if he kept the plaintiff from prosecuting an action within the limitations period by his statements or conduct. *Knudsen v. Agee*, 128 Idaho 776, 779, 918 P.2d 1221, 1224 (1996); *Mason v. Tucker & Assoc.*, 125 Idaho 429, 871 P.2d 846 (Ct. App. 1994). To establish equitable estoppel, the plaintiff must show:

[A] false representation or concealment of a material fact with actual or constructive knowledge of the truth; the party asserting estoppel did not know or could not discover the truth; the false representation or concealment was made with the intent that it be relied upon; and that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice.

Id. at 433, 871 P.2d at 850 (quoting *Williams v. Blakley*, 114 Idaho 323, 325, 757 P.2d 186, 188 (1987)).

In this case, Matthews has not shown the elements of equitable estoppel. First, he does not allege any misrepresentation by the defendants that dissuaded him from filing his action earlier. Rather, he relies upon an alleged misrepresentation by the trial court. A statement by the trial court cannot act as an estoppel against the defendants. Second, Matthews' contention that his first action was dismissed upon his "consent" after the court informed him that the dismissal would be without prejudice is not borne out by the record. Matthews attached to his complaint in this case a copy of the order dismissing his first complaint. That order is not predicated upon any consent by Matthews. Rather, the order plainly states that the district court dismissed the action because "Plaintiff provided no evidence that Defendant Chip Morgan was served with the summons and complaint . . . pursuant to Idaho Rule of Civil Procedure 40(c)," and because the court found "that the Defendants City of Boise and Boise Police Department's motion is well taken." The record thus indicates that Matthews' first action would have been dismissed anyway, whether he had acquiesced in the dismissal or not, because the motion for dismissal was well-grounded in the law.

The district court did not err in holding the statute of limitations barred Matthews' present action. The order of dismissal is therefore affirmed.

Judge PERRY and Judge GUTIERREZ **CONCUR.**